# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

PAUL PHILIP HAMILTON	)
Claimant	)
VS.	)
	) Docket No. 241,239
ARBY'S ROAST BEEF RESTAURANT	)
Respondent	)
AND	)
	)
NATIONAL UNION FIRE INSURANCE CO.	)
Insurance Carrier	)

# ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on June 1, 1999.

#### ISSUES

Respondent contends that at the time of his employment the claimant fraudulently misrepresented his physical condition. Claimant represented he had no work restrictions when, in fact, he had been restricted from lifting greater than ten pounds. Claimant subsequently injured his back while engaged in activities that exceeded his restriction. Respondent contends claimant's fraud had a causal connection to the injury and for that reason workers compensation benefits should be denied.

# FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order for medical and temporary total disability benefits should be affirmed.

This is the second appeal from a preliminary hearing in this case. In the first appeal, respondent made the same contentions made here. The Board found that claimant did not misrepresent his impairment or physical abilities. The Board also concluded that the misrepresentation would not be a defense to a claim for benefits.

On this second appeal, respondent has produced additional evidence to support its claim of misrepresentation. Respondent also argues we now have direction from the Court

of Appeals on how to treat the legal question. Respondent contends that the recent Court of Appeals decision in *Ramirez v. Excel Corporation*, Docket No. 80,670, Kan. App., *rev. denied* \_\_\_\_ Kan. \_\_\_ (1999), suggests that misrepresentation made at the time of hiring will bar a workers compensation claim by an employee if there is a causal relationship between the misrepresentation and the injury.

For the reasons stated in the initial Order by the Appeals Board, dated April 28, 1999, the Board holds that a misrepresentation made at the time of hiring does not bar a workers compensation claim even if the injury is causally related to that misrepresentation. In our view, the *Ramirez* decision does not hold otherwise. In that case, the question was whether the claimant, who had been terminated after the injury when it was discovered that he had given false information on his application for employment, would be entitled to work disability. The Court of Appeals held that the Board erred when they awarded work disability in the *Ramirez* case. But the *Ramirez* decision does not address the question presented here. The Board concludes, as stated by the ALJ at the conclusion of the initial preliminary hearing, the claimant is entitled to benefits if he suffered accidental injury arising out of and in the course of employment and otherwise meets the criteria of the Act. The Act does not make misrepresentation on an application for employment a defense.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Bruce E. Moore on June 1, 1999, should be, and the same is hereby, affirmed.

### IT IS SO ORDERED.

Dated this \_\_\_\_ day of July 1999.

### **BOARD MEMBER**

c: Joseph Seiwert, Wichita, KS
Terry J. Torline, Wichita, KS
Bruce E. Moore, Administrative Law Judge

Philip S. Harness, Director